



MEMO

MEMO DATE:	January 21, 2021
TO:	Ordinance Review Committee
FROM:	Heidi Murphy
RE:	Update on Ordinance 173-1 Use of Firearms and Weapons

State Statutes have changed and required action on this ordinance. Larry Konopacki provided the following legal summary for the committee to consider. Per Larry, firearms restrictions and archery rules are connected and should generally be addressed together therefore information on both are included in this summary.

A municipality is generally prohibited from regulating hunting, fishing, or trapping within the municipality [Wis. Stat. s 29.038(2)]. Further, municipalities are generally prohibited from enacting or enforcing an ordinance or adopting a resolution that regulates the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, bearing, transportation, licensing, permitting, registration, or taxation of any knife or any firearm . . . unless the ordinance or resolution is the same as or similar to, and no more stringent than, a state statute [Wis. Stat. s. 66.0409(2)]. There isn't a specific similar statute that addresses archery equipment, so municipalities are less restricted and have more flexibility with respect to restrictions on that equipment.

There are exceptions to these restrictions on local authority. Wis. Stat. s. 29.038(3)(a) provides that municipality "may enact an ordinance or adopt a regulation, resolution or other restriction that has an incidental effect on hunting, fishing or trapping, but only if the primary purpose is to further public health or safety." This means that if a municipality adopts a restriction that has an impact on hunting, etc., but does not directly regulate that activity, it is permissible if it was adopted to protect public health or safety.

The most common way that municipalities exercise this limited authority is by prohibiting the discharge of a firearm (and other types of "shooting" devices such as pellet guns, air guns, etc). Some also prohibit shooting archery equipment in the municipality. With respect to firearms, municipalities are specifically authorized to prohibit their firing. [Wis. Stat. s. 66.0409(3)(b)1.]. Many municipalities impose these types of restrictions.

The bow hunting provision that the Committee asked about creates an exception to this exception. It says that a municipality may not prohibit a person from hunting with a bow and arrow or crossbow but that the municipality can prohibit hunting within a specified distance, not to exceed 100 yards, from a building located on another person's land if the hunter does not have that landowner's permission. The municipality can also require the hunter to discharge the bow or crossbow toward the ground [Wis. Stat.



s. 29.038(3)(b)]. *This generally means that the hunter would have to hunt from an elevated position, such as a tree stand.*

Therefore, the question of whether this bow hunting provision is relevant depends on what the Village ordinances allow. Section 173-1 of the Village Code provides as follows:

Use of firearms and weapons.

[Amended 5-2-2005 by Ord. No. 06-2005]

Except upon permit granted by the Village Board, no person, except a sheriff, constable, police officer or their deputies, shall fire or discharge any firearm, rifle, spring or air gun, sling shot, or other dangerous weapon as defined by the Wisconsin Statutes within the Village or have any firearm, rifle, spring or air gun in his or her possession or under his or her control unless it is unloaded and knocked down or enclosed within a carrying case or other suitable container.

This ordinance does not specifically prohibit the discharge of archery equipment, but it does prohibit the discharge of any “other dangerous weapon” as defined in Wisconsin Statutes. “Dangerous weapon” is defined as “any firearm, whether loaded or unloaded; any device designed as a weapon and capable of producing death or great bodily harm; any ligature or other instrumentality used on the throat, neck, nose, or mouth of another person to impede, partially or completely, breathing or circulation of blood; any electric weapon, as defined in s. 941.295 (1c) (a); or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.” As you can see, this is a fairly broad definition! I think that a bow or crossbow definitely falls into the category of “any device designed as a weapon and capable of producing death or great bodily harm” and therefore the discharge of a bow or crossbow in the Village is currently prohibited.

Therefore, to comply with state law, the ordinance should be modified to provide that the discharge of a bow or crossbow for hunting purposes is permissible in the Village. The Committee and the Village Board could consider whether to also include the two permissible restrictions on this activity described above when crafting the revisions to this ordinance (hunting near another person’s buildings and discharge toward the ground).

While you are modifying this ordinance to meet state requirements related to bow hunting, it is also recommended that this ordinance be reviewed with respect to its firearms restrictions. In my opinion, this ordinance impermissibly restricts the possession or control of firearms and other weapons. Under Wisconsin law, a person may have in their possession a firearm that is openly carried or concealed (with a permit) and loaded in various circumstances, especially on their own property or in their vehicle. State statutes have also been revised recently to clarify this limitation. For instance, Wis. Stats. S. 66.0409(6) provides that “unless other facts and circumstances that indicate a criminal or malicious intent on the part of the person apply, no person may be in violation of, or be charged with a violation of, an ordinance of a political subdivision relating to disorderly conduct or other inappropriate behavior for loading a firearm, or for carrying or going armed with a firearm or a knife, without regard to whether the firearm is loaded or the firearm or the knife is concealed or openly carried. Any ordinance in violation of this subsection does not apply and may not be enforced.” As you can see, the ordinance quoted above is clearly outside of the boundaries of this restriction and Wis. Stat. s. 66.0409(2) as quoted at the top of this summary.